BUKIT JALIL ESTATE SDN. BHD.

v.

DATUK BANDAR KUALA LUMPUR & ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
HARUN HASHIM J
[ORIGINATING MOTION NOS. 7 & 8 OF 1978]
7 AUGUST 1986

LAND LAW: *Assessment of annual rates - Discretion of Valuation Officer - Valued separately or jointly - Appeal against administrative decision.*

On 1 February 1974, the boundaries of Kuala Lumpur were enlarged to 94 square miles when it became the Federal Territory of Kuala Lumpur under the Constitution (Amendment) (No. 2) Act 1973. Under this exercise Bukit Jalil Estate and Hawthornden Rubber Estate became part of the Federal Territory of Kuala Lumpur and are now within a city area and the Federal Capital Act 1960 and the Local Government Act 1976 for payment of rates apply.

In the exercise of absolute discretion of the Valuation Officer annual rates were imposed on Bukit Jalil Estate (which comprises 4 lots), each lot valued separately at ten per centum of the open market value. In respect of Hawthornden Rubber Estate (which comprises 11 lots), the lands were jointly valued on the basis of ten per centum of the open market value.

The two Estates appealed against the decision of the Datuk Bandar in imposing annual rates, *inter alia,* the annual assessment being much more than the annual income derived from the Estates.

Held:

[1] There is no evidence in the present case that the two Estates are situated in an area which has been exempted from the payment of rates under s. 1(4) of the Local Government Act.

[2] It is true that the Valuation Officer has a discretion but the discretion should be exercised reasonably or at least consistently. Each estate although consisting of several lots under separate title should be taken as a whole because each estate is managed as a whole. Accordingly Bukit Jalil Estate should have been assessed jointly as was done in the case of Hawthornden Estate.

[3] The proviso (c) in s. 2 of the Local Government Act does not apply to the facts of this case and the assessment in respect of these two Estates should be the estimated gross annual rent at which the holdings might reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes.

[4] The sums deposited by the appellants (if any) less any sum payable as determined in these appeals be refunded by the Datuk Bandar, Kuala Lumpur.

[Appeals allowed with costs.]

Cases referred to:

Julia Eu Kee Poh v. Chairman of Town Board of Petaling Jaya [1970] 2 MLJ 238
Newcastle City Council v. Royal Newcastle Hospital [1959] 1 All ER 734

Legislation referred to:
Constitution (Amendment) (No. 2) Act 1973, ss. 2(2), 5(4), 6(4), (5)
Federal Capital Act 1960, ss. 3(3), (4)
Federal Constitution, art. 154
Land Code (Cap 138), s. 35
Local Government Act 1976, ss. 1(4), 2(2), 139

For the appellants - Shanta Menon; M/s. Shearn Delamore & Co.
For the respondent - Chan Siew Yoon; M/s. Shook Lin & Bok

JUDGMENT

Harun J:

This is an appeal against the decision of the Datuk Bandar Kuala Lumpur in imposing **annual rates** on two rubber estates, *viz*:

(a) Bukit Jalil Estate comprising of 4 lots with a total area of 1,355.28 acres; and

(b) Hawthornden Rubber Estate comprising of 11 lots which a total area of 1,924.486 acres (or 1,867.956 acres less portions acquired for public purposes).

According to the Valuation Officer, the open market value of Bukit Jalil Estate, each lot **valued separately**, amounts to RM2,134,000 and the annual rate payable is ten per centum of the open market value. Three lots with rubber trees only were assessed on this basis for the reason that the lands are vacant, unoccupied and not built upon. The fourth lot where the estate buildings are located, was assessed on the same basis in the exercise of his absolute discretion for the reason that the land was partially built upon. In respect of Hawthornden Estate, the lands were **jointly valued** on the basis of ten per centum of the open market value of RM2,988,000 in the exercise of absolute discretion of the Valuation Officer for the reason that the whole estate is partially built upon.

According to the appellants, the annual assessment payable by Bukit Jalil Estate is RM149,380 which is much more than the annual income derived from the estate which was RM38,877 for the year ended 31 December 1976. In respect of Hawthornden Estate the annual assessment payable is RM206,160 whereas the annual income was RM135,644 for the year ended 30 June 1977. The appellants say that the lands are **occupied lands** and therefore the annual value should be the estimated gross annual rent or on the net income basis. In my view however the crux of this case turns on the present and future use of the lands. The appellants contend that:

(a) They should be allowed a continue to exist as a rubber estate as they have done for many years before the estate became part of the Federal Territory of Kuala Lumpur on 1 February 1974.

(b) They have expended large amounts of money in replanting as recently as 1976 and have every intention of continuing as a rubber estate.

(c) The estates have not been zoned under the Comprehensive Development Plans and neither have the appellants applied to the planning authorities for redevelopment the area or rezoning.

(d) If they are compelled to pay the rates imposed, it will no longer be economically viable to operate the properties as rubber estates (which together employ 360 persons) and they have to go out of business.

The Datuk Bandar contends that:

(a) Although the lands have not been zoned under the Comprehensive Development Plans, this is not a relevant factor to be taken into account in determining which basis of valuation should be adopted.

(b) Although the assessment chargeable on the holdings is more than the income derived from the estates, this also is not a relevant factor to be taken into account. The incomes from the estates may not be substantial but the said lands are valuable agricultural lands because of the great development potential by virtue of the fact that they are situated in the Federal Territory.

(c) Effect must be given to the intention of the legislature as embodied in the Local Government Act 1976 which is to discourage speculation in land and to encourage the best possible use of land. The statute should be interpreted strictly and effect must be given to the intention of the legislature regardless of the consequencies.

The Local Government Act, 1976 repealed and replaced the Town Boards Enactment of the Federated Malay States (Cap. 137) and the Town Boards & Municipal Enactments of the other States. Basically, under the old law and the present, the object of the legislation is to administer **town lands** viz. town planning, control of buildings and streets with provisions for commercial, residential, industrial, recreational and public purpose areas. Agricultural holdings were always left out of town board areas and if any were included, they immediately ceased to be agricultural holdings: see s. 35 of the Land Code FMS Cap 138.

> When alienated land is brought within the boundaries of a town or village any condition as to cultivation of such land other than a condition forbidding the cultivation of any particular product or class of products shall cease to be operative.

because the inclusion by extending the town boundary was to develop agricultural land into built-up areas. It follows that payment of town assessment rates by agricultural holding did not arise in the past.

Article 154 of the Federal Constitution provides:

> (1) Until Parliament otherwise determines, the municipality of Kuala Lumpur shall be the federal capital.
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> (2) Notwithstanding anything in Part VI, Parliament shall have exclusive power to make laws with respect to the boundaries of the federal capital.

Since the establishment of the Federated Malay States in 1895 with Kuala Lumpur as its capital, the boundaries of the Town of Kuala Lumpur, subsequently the Municipality and finally the City of Kuala Lumpur in 1972, the boundaries of Kuala Lumpur remained practically unchanged until 1974. The town area of 36 square miles was relatively small as envisaged by the Town Boards Enactment FMS Cap. 137 and the Land Code FMS Cap. 138. On 1 February 1974, the boundaries of Kuala Lumpur were very much enlarged to 94 square miles when it became the Federal Territory of Kuala Lumpur under the Constitution (Amendment) (No: 2) Act, 1973. The enlarged areas included lands which cannot be regarded as **town land**. The result is that the Federal Territory of Kuala Lumpur ceased to be a city in the strict sense but in fact a state in the context of land use. Bukit Jalil Estate and Hawthornden Rubber Estate formed part of the excised territory of the State of Selangor which made up the enlarged Federal Territory of Kuala Lumpur under this exercise. The question then arises whether these two estates could continue to be agricultural holdings with the change in sovereignty.

The Constitution (Amendment) (No: 2) Act, 1973, *inter alia,* provides:

Section 5(4) All estates and interests in any land, mining rights and forest rights within the Federal Territory which are held by any person from the State of Selangor immediately before coming into force of this Act shall continue to be held from the Government of the Federation on the same terms and conditions as they were held from the State.

Section 6(4) The Yang di-Pertuan Agong may, whenever it appears to him necessary or expedient so to do whether for the purpose of removing difficulties or in consequence of the passing of this Act, by order make such modifications to any provisions in any existing laws as he may think fit.

Section 6(5) In subsection (4), the expression "existing law" means federal or State laws and includes any subsidiary legislation made thereunder.

By the Federal Capital (City Area) Order, 1974 (PU (A) 42 of 1974) "The area of the City of Kuala Lumpur shall be extended to the extent of the area of the Federal Territory as shown in the deposited plan identified by reference to Gazette Plan No: 383". This is the plan referred to in s. 2(2) of the Constitution (Amendment) (No: 2) Act, 1973. It follows that the entire Federal Territory of Kuala Lumpur (including the two rubber estates in the instant case) is now within a **city area** and the Federal Capital Act, 1960 applies to the two estates.

Section 3(3) of the Federal Capital Act, 1960 provides for exemption from the operation of the Act in respect of any particular area of the City but by subsection (4) such exemption shall not exempt any person residing within such area from the operation of any written law relating to rates or taxation. It follows that there can be no exemption to the payment of rates that may be imposed under the Local Government Act, 1976 which came into force in the Federal Territory on 1 January 1977. This Act however, by s. 1(4) makes provision to "exempt any area within any local authority area from all or any of the provisions of the Act or from any by-laws". It seems to me that an exemption under s. 3(3) of the Federal Capital Act will not exempt any person from paying rates imposed under the Local Government Act but if a person resides in an area in the Federal Territory which is exempted from the payment of rates under s. 1(4) of the Local Government Act, then he need not pay any rates because s. 3(4) of the Federal Capital Act applies only if the rate is imposed by any written law (in the instant case under the Local Government Act).

There is no evidence in the present case that the two estates are situated in an area which has been exempted from the payment of rates under s. 1(4) of the Local Government Act. Has there been an oversight? The intention of the legislature in s. 5(4) of the Constitution (Amendment) (No: 2) Act 1973 is clearly to preserve the *status quo* at least of the landowners who had been brought into the Federal Territory under the Act and who were not formerly part of the Federal Capital. This is further emphasised by s. 6(4) of the Act where provision is made to remove difficulties by amending existing laws e.g., the Local Government Act, if there are inadequate provisions to do so under the latter Act. In my view, it will be a breach of faith if after declaring in the Constitution (Amendment) (No: 2) Act 1973 that the landowners will continue to hold their lands on the **same terms and conditions** as heretofore enjoyed by them to impose additional rates and taxes which they would not have had to pay if they had remained part of the State of Selangor. Furthermore, these lands have not been zoned for residential, industrial or commercial purpose. Until that is done, and that too only if there is a demand for a different category of land use other than agriculture, it will be unjust to impose rates on the subject-lands on the assumption that these lands are ready for immediate development and the landowners are merely holding on to them as speculators of land.

Bearing in mind the historical background of these lands and the recent constitutional changes them, I am of the opinion that special arrangements ought to have been made regarding the imposition of rates (if any) in respect of these lands. As far as I am aware, no orders or modifications have been made under s. 6(4) to give effect to the guarantees contained in s. 5(4) of the Constitution (Amendment) (No: 2) Act, 1973.

Be that as it may, it would appear that the appellants have surrendered to the demand for payment by the respondents. The only issue is at what rate.

Joint Assessment

Section 139 of the Local Government Act reads:

> The Valuation Officer may at his discretion value any holding or holdings jointly or separately.

In the present case Hawthornden Estate was valued jointly whereas Bukit Jalil Estate was valued separately.

It is true that the Valuation Officer has a discretion but the discretion should be exercised reasonably or at least consistently. No reason is given why the same Valuation Officer exercised his discretion differently except to say that he had absolute discretion in the matter. On the facts of this case, each estate although consisting of several lots under separate titles, should be taken as a whole because each estate is managed as a whole. I accordingly hold that Bukit Jalil Estate should have been assessed jointly as was done in the case of Hawthornden Estate.

Annual Value

Section 2 of the Local Government Act reads:

> 'annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes:
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> Provided that:
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> (a) -
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> (b) -
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> (c) in the case of any land:
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> (i) which is partially occupied or partially built upon;
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> (ii) which is vacant, unoccupied or not built upon;
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> (iii) with an incomplete building; or
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> (iv) with a building which has been certified by the local authority to be abandoned or dilapidated or unfit for human habitation,
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> the annual value shall be, in the case of sub-paragraph (i), either the annual value as hereinbefore defined or ten per centum of the open market value thereof at the absolute discretion of the Valuation Officer, and in the case of sub-paragraphs (ii), (iii) and (iv) the annual value shall be ten per centum of the open market value thereof as if, in relation to sub-paragraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of five per centum;
>
> (d) -

A similar situation arose in *Julia Eu Kee Poh v. Chairman of Town Board of Petaling Jaya* [1970] 2 MLJ 238 where the Town Board had assessed a rubber estate at one-tenth of the improved value thereof on the basis that the land was vacant and unoccupied. It was held in that case that occupation is a question of fact depending on the circumstances of each case. There the Court found that though the rubber trees were being tapped, there were no buildings on the land and no one lived on the estate and held that the land was vacant and unoccupied and therefore the Town Board had the right to exercise the option to assess either on the estimated gross annual rent at which the holding might reasonably be expected to let from year to year or on one-tenth of the improved value thereof. The Court there applied a strict interpretation of the provision of the Town Boards Enactment (FMS Cap. 137). That case can be distinguished from the present for the following reasons:

(a) I find as a fact that there are buildings on the estate consisting of offices, factories and quarters.

(b) Each estate must be taken as a whole and the buildings thereon are incidental to the management of the holdings as a rubber estate.

(c) The holdings are not vacant and are in fact occupied. "A farmer "occupies" the whole of his farm even though he does not set foot on the woodlands within it from one year's end to another." *Newcastle City Council v. Royal Newcastle Hospital* [1959] 1 All ER 734 PC at p. 736.

(d) A strict interpretation of the Local Government Act does not apply to the present case because the Constitution (Amendment) (No. 2) Act 1976 has to be read into the Federal Capital Act and the Local Government Act for the reasons already stated.

It is my considered opinion that proviso (c) to the definition of 'annual value' in s. 2 of the Local Government Act does not apply to the facts of this case and the assessment therefore in the respect of these two estates should be the estimated gross annual rent at which the holdings might reasonably be expected to be let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes, in short based on the rental which can be obtained from the **profits test** of the two estates. For these reasons I would allow the appeals with costs and I further order that the sums deposited by the appellants (if any) less any sums payable as determined in these appeals be refunded by the Datuk Bandar, Kuala Lumpur.

Also found at [1988] 1 CLJ 482